

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**HOUSE OF BRYANT)
PUBLICATIONS, L.L.C.,)
Plaintiff,)
v.) Civil Action No. 3:09-0502
A&E TELEVISION NETWORKS,) Judge Trauger
Defendant.)**

**DECLARATION IN SUPPORT OF
DEFENDANT AETN'S REQUEST FOR JUDICIAL NOTICE**

I, Robb S. Harvey, declare as follows:

1. I am an attorney authorized to practice before this Court, and am a partner in the law firm Waller Lansden Dortch & Davis, LLP. I am counsel of record for Defendant A&E Television Networks (“AETN”) in this lawsuit. The facts stated below are true of my own personal knowledge, except as to those matters stated on information and belief set forth herein, which matters I believe to be true.

2. Exhibit A to the Defendant’s Request for Judicial Notice is a true and correct copy of the episode of the television documentary program *City Confidential* entitled “Phantom Hitman” (the “Program”) in DVD format.¹ The Program forms the factual basis of the Complaint. *See* Complaint ¶ 11.

¹ Because Exhibits A, A-1 and C could not be filed electronically, Defendant on August 11, 2009 filed a Motion for Leave to file these physical materials manually. That Motion was granted on August 13, 2009. My declaration relates to Exhibit B that was filed with the Request for Judicial Notice on August 11, 2009, as well as the CD and DVDs which AETN is today submitting to the Clerk’s office with a Notice of Filing.

3. Exhibit A-1 to Defendant's Request for Judicial Notice is a true and correct copy of the portion of the Program in DVD format which includes the portion of the Program related to the general commentary about Knoxville, which includes the allegedly infringing twelve seconds of the song "Rocky Top" being played by the University of Tennessee-Knoxville marching band during a game at Neyland Stadium, and approximately two minutes immediately before and after.

4. Exhibit B to Defendant's Request for Judicial Notice is a true and correct copy of sheet music for the musical composition "Rocky Top." Plaintiff alleges that it has exclusive administration rights to "Rocky Top," which Plaintiff claims was allegedly infringed by the Program. *See* Complaint ¶ 9. The sheet music is commercially available and was acquired from Musicnotes.com.

5. Exhibit C to Defendant's Request for Judicial Notice is a true and correct copy of a sound recording performed by the Osborne Brothers which embodies the musical composition "Rocky Top" in CD format. The Osborne Brothers's rendition is one of the performances cited by the Plaintiff in the Complaint. *See* Complaint ¶ 7. This sound recording is commercially available and was acquired from Amazon.com.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 13, 2009.



Robb S. Harvey

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Declaration was electronically filed with the Court on this 13th day of August, 2009, and served through that system to the following counsel of record:

Richard S. Busch
King & Ballow
315 Union Street, Suite 1100
Nashville, TN 37201

/s/ Robb S. Harvey

Counsel for Defendants